

01/25/02

RECEIVED
JAN 29 2002
1C 3700 MAIL ROOM
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#4

Office of Patent Legal Administration
United States Patent and Trademark Office
Washington D.C. 20231

RE: Patent Application Serial No. 10/010,607
Pro Se Applicant: Bruce George Sharpe (Australian citizen and resident)
AFS: c/- Victoria Gaw
2561 Verbena Drive,
Hollywood CA 90068

ATT: Darnell M. Jayne, legal Advisor

Thank you for the information you forwarded for Mr Sharpe on 14 January 2002 by email.

Bruce is an elderly family friend. Initially he asked me to assist with his application, which I was most happy to help him with. Now that a mail problem has arisen which may negatively affect his priority claim he has again sought my assistance.

A Power of Attorney is attached to this letter and accompanying Petition under 1.183, as is a declaration I have made and copies of evidence in support of this petition.

I have also enclosed a cheque for US\$130.00 on his behalf as a small entity pro se applicant seeking relief with regards recognition of his right to priority under Convention for the above application based on a previous provisional patent application in Australia.

Hopefully all the attached particulars and evidence are in good order, and are acceptable for review by your office.

Yours sincerely

Ian Gorman
23 January 2002

DECLARATION

I, Ian Gorman of 34 Benson Crescent, Calwell ACT 2905 Australia, a citizen and resident of Australia, having been appointed Power of Attorney by applicant Bruce George Sharpe, 2 Elfreda Street, Old Toongabbie NSW 2146 Australia, hereby declare the following to be a true and accurate account of all matters pertaining to this petition, and further that all documentation provided herein is both accurate and relevant to the cause of this petition, as is this declaration to the Commissioner of Patents and Trademarks in the USA.

BACKGROUND

Bruce George Sharpe (Bruce) will turn 66 on 19 July 2002.

Bruce is a family friend. He approached me in November 2000 for assistance with forms and procedure for patent application in the United States knowing that I had previously successfully prosecuted such an application in the US as a pro se applicant with my partner Nic Ward for US patent 5,760,322. I have no legal qualifications.

Bruce sought my assistance to file a US patent application for his invention of a 'sharpe safe retractable hydraulic syringe' based on a provisional patent application made in Australia on 21 November 2000 (PR1588). A certified copy from the Australian Patent Office was provided by Bruce in the above identified US application (10/010,607) and a priority date claim under Convention was also requested in the above application.

As part of my procedural advice to Bruce with respect to the above application I stressed the importance of timeliness and strongly suggested he send his application via international express post well in advance of the due date for a priority claim under Convention, as this form of international express post had repeatedly proved expeditious for me in the past - taking less than 7 working days to arrive at the USPTO, whilst also providing an article number for good record keeping.

STATEMENT OF RELEVANT FACTS

2 November 2001: A bank draft for a Small Entity status US Patent Application fee (US\$ 370.00) was prepared for inclusion with the application (see annexure-1).

5 November 2001: The patent application was posted to the USPTO via International Express Post at Toongabbie Post Office, NSW Australia. The application was allotted International Express Post Article No. LX515449390AU (see also annexure-1).

3 January 2002: Bruce informed me that he had received the self addressed post card included in the application (see annexure-2). He also informed me the post card had the numbers 10/010607 and a bar code on one side, and a Baltimore post mark on the other side. He told me he could also see the numbers 21 and 2001 in the 'Baltimore' post mark on the card. I asked Bruce to photocopy the post card and fax copies of both sides to me (see annexures - 3,4 and 5 - being expanded views of this post card).

7 January 2002: Both Bruce and I made telephone calls to the USPTO in an effort to obtain some insight into what was now apparently a matter of mail 'diversion' of this application.

14 January 2002: Darnell M. Jayne, USPTO legal advisor sent an email to Bruce outlining the options with regards this application (see annexure - 6).

17 January 2002: After due consideration Bruce provided Power of Attorney to me in regards pursuing his rights under Convention in respect of seeking relief and petitioning the

US Commissioner accordingly.

17 January 2002: A letter of endorsement from an official of Australia Post was received by facsimile stating that international express post article LX515449390AU, containing the application for patent by Bruce posted 5 November 2001 at Toongabbie NSW Australia, did in fact leave Australia for the United States on 6 November 2001 (see annexure - 7).

18 January 2002: I met with Bruce, and, after assembling all relevant documentation in regards this matter I then boarded Qantas flight QF107 to Los Angeles.

23 January 2002: Today, I have completed this petition to the Commissioner and will use US Express Post and email (if possible) to ensure a timely filing of same with the USPTO.

SUMMARY

It was always the intention of Bruce George Sharpe to file pro se application for patent in the US on or before 21 November 2001 and therefore claim rightful priority under Convention based on his Provisional Application in Australia (PR-1588 - filed 21 November 2000) for his invention titled the 'sharpe safe retractable hydraulic syringe'.

Applicant maintains that any 'delay' was completely unavoidable for it is clear that the USPTO did not receive the correctly addressed application until 10 December 2001, some 5 weeks after International Express posting to the US. It is evident to the applicant that this application was 'diverted' in transit without warning nor prior knowledge to the applicant.

The appearance of the numbers '21' and '2001' adjacent to the word 'Baltimore' on the post mark of the self addressed post card returned to the applicant provide clear grounds for an assessment that the application arrived in the US on or before 21 November 2001, for within the period between the evidenced date of mailing (5 November 2001) and the evidenced final date of delivery to the USPTO (10 December 2001) only one '21' occurs, namely 21 November 2001, the 12 month anniversary of the Priority date as claimed.

Applicant further maintains that the provisions of the Berne Convention mitigate in favour of positive consideration of this petition for a filing date in US of either: 6 November 2001 - the date the International express post article containing the application was forwarded from Australia to the United States, or: 21 November 2001 - the date the application appears to have reached the Baltimore security mail station instead of its specifically designated address, namely the United States Patent and Trademark Office.

Applicant also claims remuneration for the enclosed petition fee (US\$130.00) and additionally requests amendment of priority details on the filing receipt (confirmation No. 6656) to reflect the true, correct and rightful priority date of 21 November 2000 citing Australian Provisional Patent Application No. PR 1588.

Ian Gorman.....
23 January 2002



17 January 2002

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JAN 29 2002
TO 3100 MAIL ROOM

I, Bruce George Sharpe of 2 Elfrieda Street Old Toongabbie NSW 2146 AUSTRALIA, being the inventor of the 'Sharp Safe Hydraulic Syringe' as identified in the United States Patent Application Serial No. 10/010607, hereby appoint Ian Gorman, of 34 Benson Crescent CAWELL ACT 2905 AUSTRALIA, as my representative giving him full Power of Attorney for the prosecution of the above Patent Application in the United States.

A handwritten signature in cursive script that appears to read "Bruce Sharpe".

Bruce Sharpe

ANNEXURE - 1.



RECEIVED
JAN 29 2002
TC 3700 MAIL ROOM

AIR MAIL

ASSISTANT COMMISSIONER
FOR PATENTS (U.S.P.T.O.)
WASHINGTON D.C. 20231
United States of America

Westpac Banking Corporation ABN 007 457 141, also trading as
Bank of Melbourne and Challenge Bank ('the Bank')

CUSTOMER RECORD

Branch NODEN CENTRE PLAZA
Date issued 02/11/2001
Payee ASSISTANT COMMISSIONER FOR PATENTS
Purchaser's Name I. GORMAN

Currency Code & Amount USD370.00
Exchange Rate 0.504200

AUD Amount 733.84
Deal/ FEC#
FEC Maturity Date

Draft Number 85 788 388 8

Correspondent Bank Teller F335413
THE CHASE MANHATTAN BANK, N.A.
1 Chase Manhattan Plaza,
New York, N.Y. 10081

Draft Amount USD370.00
Fee Amount AUD10.70

Amount Collected From Customer
AUD744.54

SENDER TO KEEP
LX515449390AU

FCA DETAILS >> Amount from FCA

FCA Ref#

FCA A/c#

ANNEXURE 2.
(attached)

ANNEXURE . 3

10/010601 12/10/01

SYDNEY TOWER

AUSTRALIA

卷之三

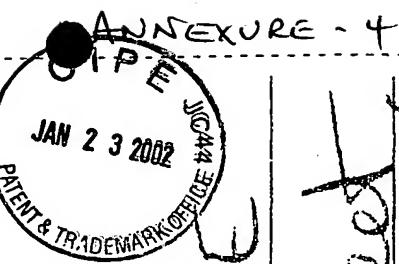


Centrep
sunset

599

U.S. PATENT RECEIVING OFFICER

Kindly stamp and return
post this card to me in
Australia. The following
has been filed at the USPTO.
Specification, claims, drawing
and abstract for invention
titled 'Shop safe having
rectangular spring', invented
by Bruce George Shattoe, also
included are: Declaration of
inventor, small entry declaration
of foreigner, disclosure statement
and petition to be made special.
Trans & Enclosed filing
with application fee of
\$37.00

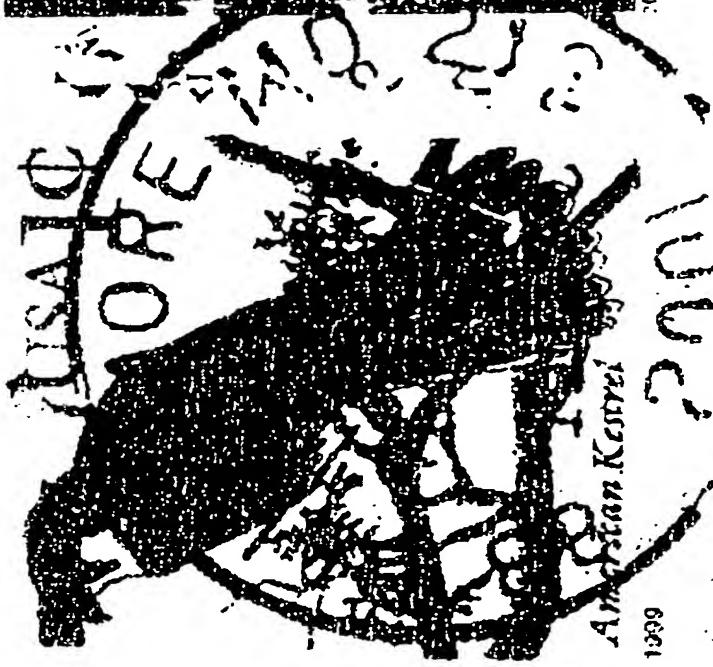
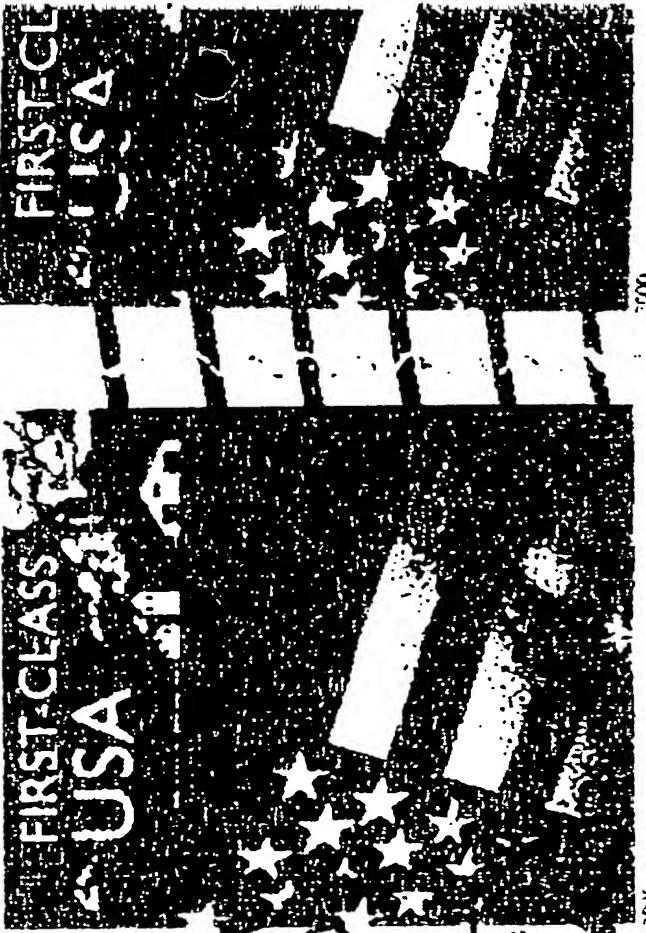


ANNEXURE - 4

TO: Bruce SHARPE
261 Field Street
Old Toongabbie, NSW
AUSTRALIA

2146

PARAVION
AIR MAIL



POST OFFICE

POST OFFICE

POST OFFICE
and Postman
to me
in

ANNEXURE 5.

ANNEXURE 6.

> Mr. Sharpe,
>>
>> Except as provided in 37 CFR 1.10, applications sent through the USPS will
>> be given the date it is received by the USPTO as its receipt date.
>> Regrettably, only the use of USPS Express Mail allows for the receipt date
>> to be the date-in provided on the Express Mail mailing label (in situations such as the filing of new patent or trademark applications), regardless of any USPS delay in ultimately delivering the correspondence to the USPTO and any consequent delay by the USPTO in treating the correspondence (e.g., issuing a Filing Receipt for new applications).
>>
>> Currently, your filing date is 12/10/01 since that is the date of receipt with the USPTO.
>>
>> If you are a pro se applicant, you should consider sending in a petition under 1.183 requesting the relief you seek and providing whatever evidence
>> you have to support the relief you seek (i.e. a grant of an earlier filing
>> date of 11/21/01), and we will see what we can make of it. Be sure to include the postal mark from Baltimore which is dated 11/21/01.
>>
>> You will need to provide a declaration that all statements are true and copies of all supporting evidence (e.g. copy of Baltimore postal mark, copy of mailing label for International Priority Post).
>> Unfortunately, there is no guarantee that the petition will be granted based on the evidence you provide. A petition fee of \$130 will need to be
>> filed with your petition.
>>
>> If you are a practitioner, I do not believe that any petition would be granted under the unavoidable standard. The MPEP says in 711.03(c) that:
>>
>> Likewise, as a "reasonably prudent person" would file papers
>> or fees in compliance with 37 CFR 1.8 or 1.10 to ensure their timely filing in the USPTO, as well as preserve adequate evidence of such filing, a delay caused by an applicant's failure to file papers or fees in compliance with 37 CFR 1.8 and 1.10 does not constitute "unavoidable" delay. See Krahn, 15 USPQ2d at 1825.
>>
>> Given we have taken this position in court (Krahn v. Commissioner, 15 USPQ2d 1823 (E.D. Va. 1990) (concerned COM practice under 37 CFR 1.8)) and in the MPEP, I do not think the current situation warrants a change in this position/policy: it is imprudent for a practitioner to mail new applications to the USPTO without using the procedures set forth in 37 CFR 1.10 or hand-delivery through a licensed U.S. practitioner.
>>
> If you have any additional questions, feel free to contact me.
>
>Darnell M. Jayne
>Legal Advisor
>Office of Patent Legal Administration
>(703) 305-3310
>darnell.jayne@uspto.gov
>>
>>

AN NEXURE, 7.

17-1-02 11:26 PM

CONFIDENTIAL



INTERNATIONAL COMMUNICATIONS
GROUP
NEW SOUTH WALES

17 January 2002

GROUND FLOOR
219-241 CLEVELAND STREET
STRAWBERRY HILLS NSW 1420
TELEPHONE 61 2 9202 6081
FACSIMILE 61 2 9202 6484
Email: icg.nsw@auspost.com.au

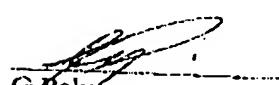
Mr I P Gorman
Fax: 02 62916724

RE: LX515449390AU

Dear Mr Gorman

I can confirm that the above International Express Post left Australia on November 6th 2001. Destination country of USA.

Regards


G Palmer
International Communications Group
02 92078241